IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/12/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION No.2682 OF 1996
AND
C.M.P.No.1473 OF 1996.

1.R.Chinnappan
2.G.Govindan
3.M.S.Radhakrishnan ... Petitioners

-Vs-

Kairunbee ... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23/1973 and Act 1 of 1980 for the relief as stated therein.

!For petitioners : Mr.S.Venkateswaran

^For respondent : Mr.V.Raghavachari

:O R D E R

The above civil revision petition has been filed against the judgment and decree dated 27.8.1996 rendered in R.C.A.No.15 of 1993 by the Rent Control Appellate Authority and the Subordinate Judge, Krishnagiri thereby confirming the fair and decretal order dated 28.10.1993 made in R.C.O.P.No.10 of 1989 by the Court of Rent Controller and the District Munsif, Krishnagiri.

2. Tracing the history of the case, what comes to be known is that the husband of the respondent herein has filed R.C.O.P.No.10 of 1989 before the Rent Controller and the District Munsif, Krishnagiri as against the revision petitioners herein and another under Sections 10(2) and 14(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act (Act 18 of 1960) thereby praying to direct the respondents therein/ the tenants to surrender possession of Door Nos.44 to 47 thus evicting the respondents therein from the building and for costs; that since the husband of the respondent herein died during the pendency of the said RCOP, the respondent was impleaded as the second petitioner therein.

3. The learned Rent Controller has conducted an enquiry into the matter wherein on behalf of the landlord/the respondent would examine herself as P.W.1 for oral evidence and would mark three documents as Exs.A.1

to A.3 for the documentary evidence. On the contrary, on behalf of the tenants/the revision petitioners herein, they would examine themselves respectively as R.Ws.1 to 3 for oral evidence with no documents marked on their side. The report of the AdvocateCommissioner was marked as Ex.C.1. Thereupon, the learned Rent Controller, having assessed the evidence placed on record in his own way, has allowed the said RCOP thereby directing the tenants therein to vacate the premises within two months from the date of that order and hand-over vacant possession to the landlord since the landlord has to demolish the said premises to construct the new building.

4. Aggrieved, the revision petitioners herein, who are the respondents 1,3 and 4 before the Rent Controller, have preferred an appeal in R.C.A.No.15 of 1993 before the Rent Control Appellate Authority and the Court of Subordinate Judge, Krishnagiri and the learned appellate authority, having considered the facts and circumstances of the case, would ultimately dismiss the said appeal thereby confirming the order of eviction ordered by the Rent Controller. It is only testifying the validity of the said concurrent findings of both the Courts below, the petitioners have come forward to file the above civil revision petition on certain grounds as brought forth in the grounds of the civil revision petition.

5. During arguments, the learned counsel appearing on behalf of the petitioners/tenants would submit that the point is whether Section 1 4(1)(a) or 14(1)((b) which is relevant in the context of the case; that no evidence has been let in by the respondent in respect of Section 14(1)(b). Citing para No.11 of the trial Court order, the learned counsel would try to consolidate his arguments pertaining to the above provision of law. Resuming the arguments, the learned counsel would further submit that it is only for repair and not for demolition and re-construction the petition has been filed, which has not been discussed by the lower appellate Court at all. At this juncture, the learned counsel would cite a judgment delivered in VIJAY SINGH & OTHERS vs. VIJAYALAKSHMI AMMAL reported in 1997-1-L.W.218 wherein the larger Bench of the Honourable Apex Court in civil appeals preferred against the judgment of this High Court rendered in Civil Revision Petition, has held:

"With the population explosion and cry for a roof in the urban areas, a situation was created where the Legislatures of different States had to enact Acts regulating the conditions on which premises in such areas are to be let out and tenants are to be evicted. By and large, there is no uniformity in the provisions applicable to different States. As such from time to time this Court has to construe the scope of special provisions of a particular State and to say what is the object behind the same."

"The framers of the Act should have made their intention more specific and clear while enacting S.14(1)(b) of the Act, instead of leaving it to the courts to interpret the same from time to time. It is not clear and specific whether the expression 'immediate purpose of demolishing' is linked with the condition of the building or with the need of the landlord to demolish an existing building in order to erect a new building on that site.... As the Act purports to give protection to the tenants from eviction it cannot be held that the time for eviction is to be decided at the will and desire of the

landlord. Therefore, the expression 'immediate purpose for demolishing' cannot be read to mean the immediate need and urgency of the landlord. But at the same time, it cannot be linked only with the dilapidated and dangerous condition of the building. The age and condition of the building has to be taken note of while judging the question of bona fide requirement of the landlord under S.14(1)(b). But the question is as to where to draw the line?"
"Permission under S.14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes to immediately demolish the building in question to erect a new building. At the same time it is difficult to accept the stand of the appelants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission under S.14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bona fide or not. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account: (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed under S.14(1)(b). No court can fix any limit in respect of the age and condition of the building. That factor has to be taken into consideration along with other factors and then a conclusion one way or the other has to be arrived at by the Rent Controller."

6. The learned counsel would also point out that the financial aspect of the landlord has not been discussed at all by the lower appellate Court and would cite paras 11,15 and 16 from the judgment of the lower appellate Court; that it is a single petition filed against four tenants for demolition and re-construction and the same is not maintainable; further more, the landlords are not the owners of the cite, but only the building; that the site belongs to the Theosophical Society; that as per the understanding, the landlord has no right to put up a new structure since she is the lessee and therefore the petition for eviction cannot be maintained; that the age of the building is only 20 years and it is not at all in a dilapidated condition; that they want to carry out only change of the roof for which purpose only the petition has been filed.

7. In reply, the learned counsel appearing on behalf of the respondent would retort stating that even in the event that the purpose is not mentioned, the allegations are to the effect of demolition and re-construction which is made clear throughout; that the respondent is financially sound to carry out the same and therefore would seek to dismiss the above civil revision petition as without merit.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it has become necessary on the part of this Court to solve the legalities at the outset prior to entering into the merit of the case viz. the landlords filing a single petition against all the four tenants and the controversy raised on the part of the tenants regarding filing of the petition to the

prayers under Sections 10(2) and 14(1) of the Act 18 of 1960.

9. So far as the first aspect of filing a single petition against four tenants is concerned, it is not the case of the landlord that all the four tenants have been inducted into possession on one and the same day and on one and the same terms and conditions particularly regarding the rent, the tenure, mode of payment etc. and it is also not the definite case of the landlord that all these aspects are exactly the same in all the four cases. The landlords have not at all offered these details in the petition, which comes to be revealed on a careful perusal of the petition filed by the respondent/landlord. To be specific, in paragraph No.8 of the petition, the landlord would state that the tenants have filed RCOP Nos.8,9,10 and 13 of 1988 for the deposit of rents and that from their own deposit, it became clear that they were in arrears of rent to a huge amount and therefore the tenants have committed wilful default in payment of rent from July 1987 and hence they are liable to be evicted on the ground of wilful default in payment of the rent from July, 1987.

10. The landlords have not offered details regarding the date of agreement duly entered into in between themselves and the tenants in each and every case, the rent fixed for each building bearing Door Nos.44 to 47 respectively of the Cooperative Colony Road, Krishnagiri nor the term of tenancy and the other conditions of the tenancy and therefore it is only proper for the landlord to have filed separate petitions for each and every case thereby offering the details of each and every tenancy and the same could not be filed as four-in-one, amalgamating the same without offering specific details even though they have paid separate Court fees for each of the tenants. The Act also does not provide for such a joint petition to be filed anywhere and therefore filing of a joint petition against four of the tenants, particularly without explaining the circumstances and the law under which the landlords have resorted to file such a joint application, is bad in law. The reason assigned in Para No.4 that since all the four buildings are in a row and for the purpose of demolition, the entire structure has to be pulled down the petition is filed as a single petition is not the proper reason. Four cases connected to four different door numbers occupied by different tenants cannot be brought under one petition, which has given way for many complications and the same is not permissible under law.

11. Secondly, the petition has been filed in a generalised manner under Sections 10(2) and 14(1) of the Act seeking eviction of the tenants without specifying as to under which sub-section of Section 10(2) and for what purpose under that sub-section, the petitioners seek the eviction etc. For instance, Section 10(2)(i) deals with `mode of rent' and Section 10(2)(ii) seeks the written consent of the landlord for transferring his rights under the lease or subletting the building and Section 10(2)(b) deals with using the building for the purpose other than for which it was leased out. Likewise, each and every specific sub-section under Section 10(2)(iii) to (vii) specify different aspects, for which the landlord could seek the eviction of the tenant and the landlord having not specified as to under which specific provision of law and for the violation of which of these Sections, the eviction is sought for, the petition filed under Section 10(2) in a

generalised form, for want of particulars and information, becomes bad in law, thus becoming liable to be dismissed at this score also.

12. Coming to Section 14(1) of the Act 18/1960, even here, the petitioners have generally quoted Section 14(1) without specifying whether it is for the purpose of Section 14(1)(a) or 14(1)(b), the eviction is sought for. Each of these sub-sections denote different purposes for which the eviction could be sought for by a landlord i.e. under Section 14(1)(a), the landlord could seek for the eviction of the tenant for carrying out repairs whereas under Section 14(1)(b), it could be sought for demolition and re-construction. Both these aspects have got different connotations in law and without specifying these aspects, no proper evidence could be let in on the part of the tenants regarding the facts and circumstances intermingled in every individual case and therefore at this score also, the petition cannot be said to have been filed in the manner required under law. Leaving such specific aspects for anyone's presumption, the Court could not decide anything in the proper manner.

13. For all the above legal discussions held, it could be safely decided that the RCOP has not been filed in accordance with law and therefore on all legal grounds discussed above, the said RCOP should have been dismissed. It is undesirable on the part of the lower Courts to have closed their eyes on all these legal aspects which have to be resolved prior to entering into deciding the facts and therefore after all these exercises, these legal aspects have to be resolved since being the basics which cannot be warded-off or neglected and hence when the case fails on legalities, there is no necessity on the part of this Court to go into the factual position of the case at all as it has been decided by the Rent Controller and the appellate authority as well, and hence the following order:
In result,
(i)the above Civil Revision Petition, for the foregoing reasons assigned, succeeds and the same is allowed.

(ii) The judgment and decree dated 27.8.1996 rendered in R.C.A.No.15 of 1993 by the Rent Control Appellate Authority and the Subordinate Judge, Krishnagiri thereby confirming the fair and decretal order dated 28.10.1993 made in R.C.O.P.No.10 of 1989 by the Rent Controller and the District Munsif, Krishnagiri is hereby set aside.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, C.M.P.No.1473 of 1996 is closed.

Index: Yes
Internet: Yes
Rao

To

1.The Subordinate Judge,

Krishnagiri.

2.The District Munsif,
Krishnagiri.